

**Special Meeting Minutes
Monday, February 09, 2009
Meeting Scheduled Start Time: 2:00 PM**

**BOARD OF SUPERVISORS
Maricopa County, Arizona
(and the Boards of Directors of the Flood Control
District, Library District, Stadium District, Improvement
Districts, and/or Board of Deposit)**



"The mission of Maricopa County is to provide regional leadership and fiscally responsible, necessary public services to its residents so they can enjoy living in healthy and safe communities"

Board Members

Max Wilson, District 4, Chairman
Fulton Brock, District 1
Don Stapley, District 2
Andrew Kunasek, District 3
Mary Rose Wilcox, District 5

County Manager

David Smith

Clerk of the Board

Fran McCarroll

Meeting Location

Supervisors' Conference Room
301 W Jefferson, 10th Fl
Phoenix, AZ 85003

BOARD OF SUPERVISORS

The Board of Supervisors of Maricopa County Arizona convened in Special Session at 2:00 PM on Monday, February 09, 2009, in the Supervisors Conference Room with the following members present: Max Wilson, Chairman, District 4; Don Stapley, Vice Chairman, District 2; Fulton Brock, District 1; Andrew Kunasek, District 3; Mary Rose Wilcox, District 5. Also present: Lori Pacini, Deputy Clerk of the Board; Shirley Million, Minutes Coordinator; Sandi Wilson, Acting County Manager; and Victoria Mangiapane, Deputy County Attorney.

Clerk of the Board

1. BRIEFING FROM COUNTY ATTORNEY ANDREW THOMAS

Receive a briefing from the Maricopa County Attorney, Andrew Thomas, concerning the legal and economic harm to Maricopa County that may result from the action taken by the Maricopa County Sheriff's Office on February 4, 2009, to segregate inmates who are undocumented immigrants from the general jail population. Mr. Thomas has been quoted in the Arizona Republic newspaper on Friday, February 6, 2009 as stating, "I believe that racial and ethnic segregation by the government is unconstitutional." (C-06-09-295-P-00)

Chairman Wilson said this meeting was called over alarm expressed by several regarding a press quotation by the County Attorney saying that Sheriff Arpaio is acting unconstitutionally. He asked if Andrew Thomas, Maricopa County Attorney, was present, as requested, to give a statement on that report.

Barnett Lotstein, Special Assistant County Attorney, told the Board he was authorized to speak for Mr. Thomas. Chairman Wilson asked him to explain the unconstitutional actions referenced by Andrew Thomas to the Board.

Barnett Lotstein informed the Board that, "The County Attorney stands by his statement of principle regarding the unconstitutionality of racial or ethnic segregation whether it occurs in the courtroom or in the jailhouse." He added the Sheriff has given public notice that his policy is based on immigration status and not racial identity.

He commented on the Chairman's request for a legal opinion regarding the Sheriff's decision to segregate illegal immigrants in the County jail. He said the County Attorney's Office (CAO) finds "this proceeding to be highly unusual and we believe it is detrimental to the citizens of Maricopa County."

He continued his statement: "Specifically, the Chairman's request that we, as the Board of Supervisors' legal counsel, provide legal opinions in a public forum rather than in executive session, which is the ordinary forum for seeking legal advice, is without precedent." This would be because of the rules of confidentiality. He said that providing legal advice in a public forum would have numerous negative ramifications and could be considered as a waiver of attorney-client privilege.

He noted additional reasons that the, "County Attorney's Office is not going to engage in public discussions of legal advice on this or any other matter."

The Chairman asked if a statement to the newspaper is the proper forum to notify the Board of illegal actions.

Mr. Lotstein replied, "The newspaper reported a specific, principled statement by Mr. Thomas, which he stands by. And that is in all cases, not necessarily in this particular situation. In all cases, racial and ethnic segregation is unconstitutional." He added that nothing has been proven illegal in this case as yet.

Chairman Wilson said it was thought that the public statement caused some exposure to Maricopa County.

Mr. Lotstein said there would only be exposure if at some point in the future the court would hold that there had been racial segregation. At this point there is no exposure to Maricopa County.

Supervisor Wilcox said the public statement could cost the County a lot of money if it was interpreted that the County is at risk by the incarceration of inmates that, in her mind, were segregated. She told Mr. Lotstein, "we are posted for e-session. We have been offered to go into e-session, perhaps we should go into e-session and you could give us advice." She said the Board needs legal advice because of the clear statement in the newspaper that could put the County at risk.

Supervisor Stapley expressed disappointment that the County Attorney did not accept the invitation to be here. He also expressed disappointment that Mr. Thomas does not directly interact with Board Members. He said he has not had any substantive discussions with the County Attorney for three years because, "Mr. Thomas will not return my phone calls, and has stated, through his staff, that I was not to directly try to contact him." He said, "It is really difficult when you can't deal with your statutorily elected County Attorney, who was elected and is statutorily required to give you legal advice."

Supervisor Kunasek said he would prefer to hear from Mr. Thomas in executive session. That was the request that was made today. "I don't know if he is prepared - I don't know if he is in the building - to come up and do that. But if we're not going to hear from him, since the comments everybody is referring to were made by him, maybe it would be advisable to schedule it for a time when he can attend."

The Chairman concurred with Supervisor Kunasek, saying, Andrew Thomas obviously had some concerns at what was happening in the jails prior to his media comment. "I

will reschedule this again in executive session and give him the opportunity to come and explain the issue to us."

Mr. Lotstein said that legal advice to the Board of Supervisors is probably given by representatives of the County Attorney in 99.44 % of the cases. It is a rare circumstance when the County Attorney himself appears to give legal advice. He added that in all the years Rick Romley served as County Attorney, "he did not appear before the Board more than a half a dozen times."

Chairman Wilson said he did not agree with that statement.

Supervisor Stapley asked to verify for the record that the statement read by Mr. Lotstein, "calls Mr. Thomas' statement to the press, in a public setting, a general statement of principle." He added that when he read it and heard it on TV, in no way was it a general statement of principle. He said it was very specifically talking about the actions of the Sheriff last week, relative to the inmates who he publically marched out onto a public street, in chains, and segregated in Tent City.

Supervisor Stapley said he was personally offended that Andrew Thomas would not come today and that he would send someone to read a statement that tries to mischaracterize what he said.

Supervisor Wilcox agreed with the statements given and added that she had a letter from the ACLU that very clearly sides with the County Attorney that the actions were unconstitutional. She said the Board needs to receive some legal advice and needs to find out if it is unconstitutional, as both the County Attorney and the ACLU have on record, and if it is unconstitutional, it has to stop. The sooner we can schedule that executive session, the better.

Chairman Wilson said he would schedule a meeting and invite Andrew Thomas to attend another executive session on this matter.

MEETING ADJOURNED

There being no further business to come before the Board, the meeting was adjourned at 2:15 p.m.

ATTEST:

Max W. Wilson, Chairman of the Board

Lori Pacini, Deputy Clerk of the Board